

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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ERIC RODRIGUEZ, et al.	:	02 Civ. 618
	:	
Plaintiffs,	:	<b>OPINION AND ORDER</b>
v.	:	<b>ADOPTING</b>
	:	<b>SPECIAL MASTER'S</b>
GEORGE E. PATAKI, et al.	:	<b>CONGRESSIONAL</b>
	:	<b><u>REDISTRICTING PLAN</u></b>
	:	
Defendants.	:	
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To help ensure the fair, orderly and lawful election of Members of Congress from New York State, this three-judge court hereby adopts in its entirety the Report of Special Master Frederick B. Lacey submitted on May 13, 2002, including its proposed redistricting Plan (the "Special Master's Plan" or the "Lacey Plan") dividing the State into 29 Congressional districts based upon the 2000 census.<sup>1</sup> The Special Master's Plan complies with the Voting Rights Act of 1965, as amended in 1970, 1975, and 1982, 42 U.S.C. §§ 1973, et seq. and the Constitutions of the United States and the State of New York.

**I. Procedural History**

This action, filed on or about January 25, 2002, sought declaratory and injunctive relief against use of New York State's existing state legislative and Congressional districts in the forthcoming 2002 elections. Among other things, the Complaints and Amended Complaints ask this Court to intervene to ensure that Congressional district lines are drawn in time for the fair and orderly conduct of the primary and general elections to be held in 2002. As of this date, the New York State Legislature has enacted, and the Governor has signed, legislation creating new

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<sup>1</sup>The Special Master's Plan may be found at [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov).

boundary lines for Assembly and State Senate districts but has not redrawn Congressional district boundary lines to reflect changes in population reported in the 2000 federal census. There exists a Congressional redistricting "impasse" in New York State.

By Order dated April 5, 2002, the three-judge Court, composed of Chief Circuit Judge John M. Walker, Jr., District Judge John G. Koeltl, and District Judge Richard M. Berman, was empaneled to hear and determine the action, pursuant to 28 U.S.C. § 2284(a). On April 22, 2002, the Court was advised at a conference with the parties that time was of the essence in drawing new Congressional districts since petitions were to begin circulating on June 4, 2002; the primary election is scheduled for September 10, 2002; and the general election is scheduled for November 5, 2002. See also May 20, 2002 Hearing, Tr. at 52 (Counsel for Plaintiffs: "I think the drop dead date was about a week ago.").

By Order dated April 26, 2002, the Court appointed former United States District Judge Frederick B. Lacey as Special Master, pursuant to Federal Rule of Civil Procedure 53, to assist the Court in resolving the impasse.<sup>2</sup> The April 26, 2002 Order states, among other things, the following:

1. The Special Master shall be empowered and charged with the duty to prepare and recommend to the Court a report, including a proposed redistricting plan for adoption by this Court for the State of New York, dividing the state into 29 congressional districts in accordance with the 2000 federal census and applicable law.
2. In developing the plan, the Special Master shall adhere to and, where possible, reconcile the following guidelines:
  - (a) Districts shall be of substantially equal population, compact, and contiguous.

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<sup>2</sup>Judge Lacey also served as Special Master in 1992 to help develop a Congressional redistricting plan based upon the 1990 census. See Puerto Rican Legal Defense and Educ. Fund, Inc. v. Gantt, 796 F. Supp. 681, 684 (E.D.N.Y. 1992) ("PRLDEF").

- (b) The plan shall comply with 42 U.S.C. § 1973(b) and with all other applicable provisions of the Voting Rights Act.
3. The Court is acutely aware of the pressing need for having a redistricting plan in place as soon as possible. . . . It is therefore necessary for this Court to prepare for the possibility that this Court will be required to adopt an appropriate redistricting plan. Accordingly, the Court requests the Special Master to submit his plan for redistricting to the Court on May 10, 2002, or as soon thereafter as he is able to complete a plan that meets the requirements of the law and of this order.

Rodriguez, et al. v. Pataki, et al., 02 Civ. 618, 2-3 (S.D.N.Y. April 26, 2002) (order).

Special Master Lacey immediately assembled a team of experienced attorneys and redistricting experts to assist him and also enlisted the cooperation of the New York State Legislative Task Force on Demographic Research and Reapportionment, including its Co-Executive Directors, Ms. Debra A. Levine and Mr. Lewis M. Hoppe. He hired three highly qualified experts, namely Bernard N. Grofman, Ph.D., Professor Nathaniel Persily, and Marshall L. Turner, Jr.<sup>3</sup> See Lacey Plan at 3 ("In light of the limited time available to develop a plan, I immediately determined that it would be necessary to retain experts familiar with the process of districting, districting principles, the requirements of the Constitution and the Voting Rights Act of 1965, 42 U.S.C. §§ 1973, et seq., and the implications of the United States Supreme Court's decision in Shaw v. Reno, 509 U.S. 630 (1993), and its progeny.").

By public notices dated April 29, 2002 and May 2, 2002, Special Master Lacey invited the parties, intervenors, and all other interested persons to attend a hearing on May 6, 2002 at the Thurgood Marshall Courthouse, Rm. 706, 40 Centre Street, New York, New York, to present their views on redistricting and to submit proposed Congressional redistricting plans of their own.

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<sup>3</sup>Pursuant to an Order dated April 25, 2002, the Court requested that the parties submit no later than April 29, 2002, a joint list of experts who might assist a Special Master in the development of a redistricting plan for the State of New York. The parties recommended Mr. Turner.

See Lacey Notices, dated May 2, 2002 and May 6, 2002. Approximately 80 persons attended the May 6, 2002 hearing. Both written and oral comments were submitted, and further written submissions were invited and received thereafter.

On May 13, 2002, Special Master Lacey filed his Report and Plan of the Special Master with the Clerk of the United States District Court for the Southern District of New York. The Report also included an Executive Summary, Appendix in Support of the Report and Plan of the Special Master, and Affidavit of Bernard M. Grofman. By Orders dated May 13 and 16, 2002, the three-judge Court scheduled a public hearing for May 20, 2002 at the Thurgood Marshall Courthouse, Rm. 1705, and invited public (written and oral) comment on the Lacey Plan.<sup>4</sup>

The hearing on May 20, 2002 was well attended and extremely helpful to the Court. Those present included, among others, the Special Master, William Primps, a member of the law firm of LeBoeuf, Lamb, Greene & MacRae, L.L.P., and Lorna McKenzie of that firm; the Special Master's experts Bernard N. Grofman and Nathaniel Persily, and other members of his team; Representative John J. LaFalce; Representative Maurice D. Hinchey; counsel for Plaintiffs and Intervenor; counsel to the Assembly, Senate and Governor Pataki; counsel for various Congressional representatives, and interested informed public participants representing a cross-section of views. Comments presented reflected a widely held view that the Plan of the Special Master demonstrated a high degree of diligence, expertise and professionalism. See, e.g., May 20, 2002 Hearing, Tr. at 100, "I also want to for the moment express my appreciation to Judge Lacey, his colleagues at LeBoeuf, Lamb, principally Mr. Primps, his experts Mr. Grofman and Professor Persily, who have received the Assembly's input and comments and discussions with a

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<sup>4</sup>The Court has received numerous informative submissions which have been docketed with the Clerk of Court and are part of the record of these proceedings.

great deal of professional grace and patience . . . ." (Mr. Daniel Chill on behalf of the State Assembly). Proposals to alter discrete aspects of the Lacey Plan were also made and included suggestions for reconfiguring certain of the boundary lines of the Plan's proposed 29 districts.

## **II. State Court Proceeding**

On or about the same date this case was filed in the Southern District of New York, Plaintiffs filed a companion action in State Supreme Court, New York County entitled Allen, et al v. Pataki, et al. No. 02-101712 (the "Allen case"), which was assigned to New York State Supreme Court Justice Herman Cahn. To date, Justice Cahn has conducted several conferences and hearings, appointed a Special Referee to assist his Court in the preparation of a Congressional redistricting plan and, following hearings, denied Plaintiffs' motion for a preliminary injunction.

On April 29, 2002, Defendant Senator Joseph L. Bruno sought to remove the Allen case to the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. §§ 1441, 1446(b) & 1447(c). On April 30, 2002, plaintiffs moved to remand the action to the New York State Supreme Court arguing, among other things, that not all non-nominal parties had consented to the removal. On May 2, 2002, Judge Berman signed an Order granting Plaintiffs' motion to remand, finding, among other things, that "[b]ecause not all non-nominal Defendants have consented to removal of the entire action, removal is improper." Rodriguez, et al. v. Pataki, et al., 02 Civ. 618, at 2 (S.D.N.Y. May 2, 2002) (order).<sup>5</sup>

On May 3, 2002, Justice Cahn appointed Kenneth J. Bialkin, Esq. as Referee "to hear and report, and to submit to [the Supreme Court] a valid reapportionment plan for the Congressional districts of the State of New York, reducing the number of Congressional districts to 29, valid

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<sup>5</sup>On May 8, 2002, Judge Berman signed an Order denying Senator Bruno's application for reconsideration of remand of the Allen case. See Rodriguez, et al. v. Pataki, et al., 02 Civ. 618 (S.D.N.Y. May 8, 2002) (order).

under the constitutions of the United States and the State of New York as well as the Federal Voting Rights Act and applicable State statutes. . . ." See Allen v. Pataki, Index No. 101712/02, at 2-3 (N.Y. Sup. Ct. May 3, 2002) (order). After appointing his own team of experts, soliciting comments, and conducting a public hearing, Mr. Bialkin filed a proposed redistricting plan with the Clerk of the New York State Supreme Court, New York County on May 20, 2002 ("Plan and Report of the Referee" or the "Bialkin Plan"). The Bialkin Plan and the Lacey Plan are similar in most respects. "In the course of this process, I received the Special Master's Plan, which seemed largely to agree with my own approach." See Bialkin Plan at 20. The Bialkin Plan does differ from the Lacey Plan in limited respects in New York City and Westchester County. The Bialkin plan involves several additional county-line crossings. Justice Cahn scheduled a public hearing on the Bialkin Plan for May 24, 2002. However, on May 20, 2002, Defendants again removed the Allen case to the Southern District of New York. Notice of Removal, dated May 20, 2002 ("Senator Bruno hereby removes this action to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §§ 1441(a), (b) and (c).") On May 22, 2002, the Court received a letter stating, among other things, that "plaintiffs do not object to Defendant Bruno's Notice of Removal dated May 20, 2002." Letter from Richard D. Emery, dated May 22, 2002.

### **III. Applicable Legal Standards**

A redistricting plan must ensure voting equality by complying with the Constitutional mandate of "one person, one vote," see, e.g., Reynolds v. Sims, 377 U.S. 533, 558 (1964), and must also safeguard the voting rights of minority groups. See White v. Regester, 412 U.S. 755 (1973). It must satisfy the requirements of the Fourteenth and Fifteenth Amendments to the United States Constitution and of Sections 2 and 5 of the Voting Rights Act of 1965, 42 U.S.C. §

1973 et seq., as well as the requirements of New York redistricting law. "The equal protection clause of the fourteenth amendment guarantees the opportunity for equal participation by all voters, and redistricting plans that do not achieve fair and effective representation for all citizens impair the basic and fundamental rights secured by this amendment." Puerto Rican Legal Defense and Educ. Fund, Inc. v. Gantt, 796 F. Supp. 681, 687 (E.D.N.Y. 1992) ("PRLDEF") (citing Reynolds v. Sims, 377 U.S. 533, 566 (1964)).

The Voting Rights Act places constraints on redistricting. Section 2 prohibits redistricting plans that, in the totality of circumstances, deny or abridge the voting rights of protected groups. See 42 U.S.C. §§ 1973(a), 1973b(f)(2). Section 2 is binding on this Court. Section 5 requires "covered jurisdictions" to obtain either judicial preclearance from the United States District Court for the District of Columbia or administrative preclearance from the United States Attorney General before implementing new voting practices, "in order to prevent changes that have a discriminatory purpose or effect." Clark v. Roemer, 500 U.S. 646 (1991); see also 42 U.S.C. § 1973c.<sup>6</sup> Under Section 5, redistricting plans drawn by a federal court, such as the Plan considered here, are not subject to preclearance. See Connor v. Johnson, 402 U.S. 690, 691 (1971) ("A decree of the United States District Court is not within reach of Section 5 of the Voting Rights Act.").

Additional redistricting considerations include: (i) "compactness, contiguity, and respect

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<sup>6</sup>"Covered jurisdictions' are those states or counties therein which maintained any 'test or device', see 42 U.S.C. § 1973b(c), on November 1, 1964 and November 1, 1968, and in which fewer than half of its voting age residents voted or were registered to vote in the Presidential elections of 1964, 1968, or 1972." See PRLDEF, 796 F. Supp. at 690. Three counties in the State of New York are covered jurisdictions, i.e. Bronx, Kings, and New York counties.

for pre-existing political subdivisions," Miller v. Johnson, 515 U.S. 900, 918 (1995);<sup>7</sup> and (ii) "preservation of municipal boundaries, maintenance of the cores of existing districts, communities of interest, and political fairness." PRLDEF, 796 F. Supp. at 691.<sup>8</sup> The New York State Constitution also requires, in appropriate contexts, that legislative districts be "compact," "contiguous" and "convenient" to the fullest extent possible. N.Y. Const. art. III, §§ 4, 5; see also Diaz, 978 F. Supp. at 127 (compactness and respect for political boundaries are traditional redistricting criteria under New York law). New York State's election law, similarly, provides that "[e]ach election district shall be in compact form . . . ." N.Y. Elec. Law art. IV, § 4-100(3)(a) (LEXIS 2000).

#### **IV. Analysis**

The three-judge Court finds that Special Master Lacey's Plan meets all applicable legal requirements and that its immediate adoption is required to ensure a timely and orderly New York State Congressional election process. Among the Court's findings, see Fed. R. Civ. P. 52, are the following:

1. The Special Master's Plan achieves population equality. "[A]bsolute population equality [is] the paramount objective of apportionment" and "[a]s between two standards--equality or something-less-than equality--only the former reflects the aspirations of Art. I, § 2." Karcher v. Daggett, 462 U.S. 725, 732 (1983). The Lacey Plan scrupulously adheres to the principles of

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<sup>7</sup>"We emphasize that these criteria are important not because they are constitutionally required--they are not, . . . --but because they are objective factors that may serve to defeat a claim that a district has been gerrymandered on racial lines." See Shaw v. Reno, 509 U.S. 630, 647 (1993) (internal citation omitted).

<sup>8</sup>The exact weight to be afforded each of these factors does not appear to be constitutionally or statutorily specified. See Diaz v. Silver, 978 F. Supp. 96, 105 (E.D.N.Y.) summarily aff'd, 522 U.S. 801 (1997).



"one person, one vote." Based upon the 2000 census, the total population of the State of New York is 18,976,457 and, therefore, the ideal population size of each of the 29 districts is 654,360.6. Under the Lacey Plan, "[s]eventeen districts have a population of 654,361 and twelve districts have a population of 654,360." Lacey Plan at 21. The Plan achieves population equality with a "zero deviation." Id.<sup>9</sup>

2. The Lacey Plan safeguards the voting strength of minority populations protected under the Voting Rights Act. It preserves the demographic composition of the four districts (Districts 6, 10, 11, and 16) in which, currently, a single protected minority constitutes a majority of the voting age population (a "majority-minority district") and the two districts (Districts 12 and 15) in which protected minorities combined currently constitute a majority of the voting age population (a "minority coalition district") and elect minority candidates. It also preserves as minority coalition districts both Districts 7 and 17 that currently elect non-Hispanic white candidates. The Lacey Plan also creates a new minority coalition district (District 5) in the Nassau/Queens area.<sup>10</sup> The current District 5 has a voting age population that is 68.21% Non-Hispanic White, 3.11% Non-Hispanic Black, 8.63 Hispanic, and 18.22% Non-Hispanic Asian. District 5 under the Lacey Plan has a voting age population that is 46.25% Non-Hispanic White, 5.08 Non-Hispanic Black, 22.04% Hispanic, and 24.25% Non-Hispanic Asian. The demographic composition of the voting age population in the nine districts under the Lacey Plan that are either majority-minority or minority coalition districts is outlined in the following table:

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<sup>9</sup>See also Bialkin Plan at 18 ("The Special Master's Plan complies with the constitutional requirement of 'one person, one vote' by achieving population equality or a maximum mean deviation of zero.").

<sup>10</sup>The Bialkin Plan does not create an additional (ninth) majority-minority district.

### **Majority-Minority and Minority Coalition Districts Under the Lacey Plan**

District	NHWhite %VAP	NHBlack %VAP	Hispanic %VAP	NHAsian %VAP
5	46.25	5.08	22.04	24.25
6	14.53	51.11	16.23	8.98
7	30.81	15.82	36.98	13.06
10	16.84	59.99	16.52	2.98
11	23.57	56.77	11.59	4.31
12	26.88	8.15	44.67	16.91
15	19.05	30.48	44.79	3.26
16	3.59	30.59	61.52	1.82
17	41.99	29.18	21.50	4.05

3. The Lacey Plan also respects the redistricting principles of compactness, contiguity, pre-existing political subdivisions, and preservation of communities of interest. Special Master Lacey began the process of redistricting with the Congressional districts on Long Island, and, in so doing, left largely intact Districts 1 through 4, the four districts completely within the boundaries of Suffolk and Nassau counties, except for necessary population adjustments.<sup>11</sup> "Available census data show that the residents in Districts 1 through 4 have substantially the same demographic profile as in the current Districts 1 through 4 under the 2000 Census." Lacey Plan at 13.

With respect to districts entirely within the boundaries of New York City, i.e. Districts 6 through 16, the Special Master's Plan, similarly, respects "the cores of current districts and the communities of interest that have formed around them." Lacey Plan at 14. "Proposed Districts 6, 8, 9, 10, 11, 12, 13, 14 and 15, substantially maintain the core and shape of the current districts

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<sup>11</sup> The Special Master's plan for Long Island followed the Senate Majority proposal. "The Senate Majority proposal for Long Island satisfied the neutral redistricting principles of contiguity, compactness and respect for the cores of its current districts." Lacey Plan at 12.

. . . . " Lacey Plan at 14.<sup>12</sup> Districts 6, 8, 9, 10, 12, 13, 14, 15 and 16 retain substantially the same demographic make-up as currently exists. Id. at 15-17.<sup>13</sup>

Special Master Lacey notes that current Districts 17 and 18 cross the New York City/Westchester border. See Lacey Plan at 17. Under the Lacey Plan, District 17 changes from a predominantly Bronx-based district to a predominantly Westchester-based district.

Based upon the ideal population needed to achieve population equality throughout the state, the City and Long Island can support the equivalent of 16.45 congressional seats. Thus, at least one of the 17 districts in lower New York must cross the Bronx-Weschester border. Again, aided by my experts' analyses, I determined it was preferable, if feasible, where appropriate given a consideration of all factors, to minimize county intrusions. Accordingly, in my Plan only one district, proposed District 17, extends north from the Bronx into Weschester.

Lacey Plan at 17. District 18, entirely outside New York City, extends northward to achieve population equality, from Westchester County to Putnam County in the north and Rockland County in the west. "[B]ecause of the joining of Westchester County and Rockland County in this area by the Tappan Zee Bridge, continuity is preserved and a community of interest is respected." Id. at 19.

Upstate, the Special Master adhered to the same legal principles outlined above. Special Master Lacey was guided, among other things, by the principle of "one person, one vote," and by the reality that the population growth upstate has been slower than downstate. He also sought to keep communities together, such as Buffalo, Rochester, the Albany capital region, the

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<sup>12</sup>See, e.g., Letter from counsel for Representative Carolyn B. Maloney, dated May 15, 2002 ("Judge Lacey's Plan preserves the separation of the East Side from the West Side of Manhattan, as the Assembly Plan does. By doing so, it respects the traditional divisions and historical differences between the two communities.").

<sup>13</sup>See, e.g., Letter from Representative Nydia M. Velasquez, dated May 16, 2002 ("Your plan maintains the delicate balance of the 12<sup>th</sup> Congressional District, as configured after the Diaz [v. Silver] decision in 1997.").

southern tier along the northern Pennsylvania border, and the "north country" along the Canadian border. The "newly created District 26 in the Special Master's Plan encompasses an area including all of the City of Buffalo"; District 28 encompasses "all of the City of Rochester and maintains the core of current District 28"; and "District 21 . . . encompasses the traditional capital district including the entire City of Albany, which approximates the boundaries of current District 21." Id. at 20.

4. Because of relative population shifts, New York will have 29 rather than 31 Congressional Representatives. The Lacey Plan accurately reflects the population in the different areas of the State of New York, creating 16 districts wholly in New York City and Long Island, 12 districts in the area of the State north of New York City, and one district with 45% of its population in New York City (the Bronx) and 55% of its population in counties to the north and northwest of New York City. In the Lacey Plan, the two districts (17 and 18) which currently include portions of both Westchester and New York City will be changed. Under the Lacey Plan, District 17 will become a district the majority of whose population is located outside of New York City, and District 18 is entirely outside of the City.

Other population driven changes in the Lacey Plan involve the reconfiguration (or combination) of districts that currently are located in upstate New York. "[T]he [upstate] area encompassed by current District 23 has been combined with the area encompassed by current District 26 to form one proposed district, numbered District 23. . . . [T]he area encompassed by current District 29 is to be combined with the area encompassed by current District 30 to form a new district, designated District 26." Lacey Plan at 19. Because of the reduction of the State's Congressional delegation by two members, at least four incumbents must be "paired." Under the Lacey Plan, this result is anticipated to be achieved in District 23 (where a Republican and a

Democratic incumbent will likely compete) and in District 26 (where a Republican and a Democratic incumbent will also likely compete). Under the Congressional plan proposed by Referee Bialkin, the upstate districts are "congruent" with those of the Lacey Plan and thus the "paired" districts are the same.

5. The three-judge Court is convinced that Special Master Lacey's Plan is fair and lawful. The merit of the Lacey Plan is supported by a range of favorable comments received by the Court. No party has raised a challenge to its legal validity. At the hearing held by the three-judge Court on May 20, 2002, while specific concerns were appropriately voiced, there was nearly universal acknowledgment of the Lacey Plan's fundamental fairness. See Plaintiffs' Comments to the Three-Judge Court at 4 (May 20, 2002) and various comments at the May 20, 2002 Hearing ("We believe . . . that the plan as proposed by the Special Master satisfies constitutional and Voting Rights Act requirements and will permit the State of New York to conduct its Congressional elections this year in a timely manner.") (Henry T. Berger for plaintiffs); Tr. at 88 ("We would just like to take the opportunity to not just compliment but it is a staggering undertaking that Judge Lacey has gone through and it is a remarkable plan. I speak on behalf of the 13<sup>th</sup> Congressional District which is compact; it is contiguous.") (Robert Muir on behalf of Congressman Vito Fossella); id. at 90 ("We strongly believe that the Lacey Plan, which offers 29 Congressional Districts with zero deviation in population, and which satisfies the constitutional standard of one-person, one-vote is the fair, equitable and logical choice for preserving our community of interest.") (Dr. Jacques O. D'i.Michel, Chairman of the Haitian/American Voters and Entrepreneurs National Council); id. at 100 ("By way of a personal note, your Honor, I have been in this redistricting business for 40 years, representing the Assembly over four decades of redistricting, and I never thought I would come to the court and say I love the court plan almost

100 percent except for what I am going to talk about.") (Mr. Daniel Chill on behalf of the State Assembly); id. at 109-110 ("We want to join in the chorus that recognizes the fine job that the Special Master has done . . . . If you take this plan and you start pulling at the thread in this district or that district, you end up with a situation where you're going to end up having to redraw the entire plan. For that reason, there is something to be said, there is a lot of virtue in repose here.") (Mr. Louis Fisher on behalf of Senator Bruno). The foregoing comments are a tribute to the dedication and diligence of Judge Lacey and his team in successfully and on short notice completing the complex task of Congressional redistricting in New York State in a manner that fully comports with legal requirements. In the absence of any objection of substance and in light of the need for prompt attention to the business of administering the 2002 primary and general elections, we conclude that adopting the Plan proposed by Special Master Lacey is both necessary and appropriate.

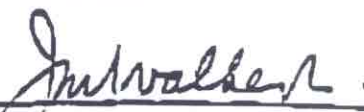
While we adopt the Special Master's Plan, we also recognize the prerogative and responsibility of the State legislature to draw Congressional lines. We are fully in accord with the Supreme Court's view that federal courts engaged in redistricting owe "adherence to the principles expressed in [Scott v.] Germano, which derive from the recognition that the Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts." Grove v. Emison, 507 U.S. 25, 34 (1993). Even though the election clock is ticking, this Court remains willing, indeed eager, to accommodate timely state action and is open to the possibility of withdrawing the Plan we are adopting if the State were to enact an appropriate and lawful plan of its own that allows for a full, fair and orderly election process. Although this Court has chosen not to adopt the proposed modifications to the Lacey Plan, we are prepared to defer to the State in the event that the legislature timely

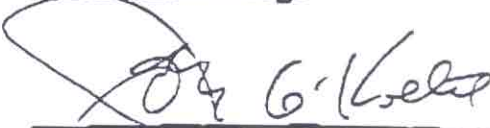
legislature timely adopts any appropriate and lawful modifications to this plan, with the receipt of any necessary preclearance. Thus, the adoption of the plan proposed by Special Master Lacey is without prejudice to the rights of interested parties to seek changes to the Plan through legislative action, the preferred means of settling redistricting disputes. If the State does not timely enact a separate plan or modifications to this Plan, the three-judge Court has full confidence that the Plan of Special Master Lacey fully accomplishes the goals of fairness and compliance with applicable law.


**V. Conclusion and Order**

For the reasons stated above, the three-judge Court hereby adopts Special Master Lacey's Congressional redistricting plan in its entirety and orders that it take effect immediately.

SO ORDERED.

  
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John M. Walker, Jr.  
Chief Circuit Judge

  
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John G. Kosi  
United States District Judge

  
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Richard M. Berman  
United States District Judge

Dated: New York, New York  
May 23, 2002